(1) Existing rents adjusted by an operating cost adjustment factor established by HUD (OCAF);

(2) A budget-based rent determined in accordance with §514(g)(3)(a) through (e) of MAHRA, except that HUD rather than a PAE will determine operating expenses and HUD may adjust the debt service component to reflect competitive interest rates; or

(3) In the case of a contract under the section 8 moderate rehabilitation program (other than single room occupancy dwellings under section 441 of the Stewart B. McKinney Homeless Assistance Act), the lesser of existing rents adjusted by an OCAF, fair market rents (less any amounts allowed for tenant-purchased utilities), or comparable market rents.

(d) *Rent adjustments.* Rent adjustments (either positive or negative) for contracts renewed under this section will be determined using an operating cost adjustment factor as provided in §401.412 of this chapter, except that rents may be redetermined using a budget-based rent adjustment from time-to-time at the discretion of HUD. A budget-based adjustment may include a rent comparability analysis.

[63 FR 48953, Sept. 11, 1998; 63 FR 71374, Dec. 28, 1998]

§ 402.6 What actions must an owner take to request section 8 contract renewal under this part?

(a) *Timing and content of request.* For renewals of contracts with expiration dates on or after October 1, 1998, an owner must submit the following information to HUD (or to the contract administrator in the case of a contract under the moderate rehabilitation program) at least 3 months before the expiration date of any project-based section 8 contract on a project or as soon as practicable if the contract expires before January 13, 1999:

(1) A certification that neither the owner nor any affiliate is suspended or debarred;

(2) A comparable market rent analysis (unless the project is eligible under §402.5(b)(1) or does not have a HUD-insured or HUD-held mortgage, and the owner is not seeking renewal under §402.4); and

(3) If an owner of a project eligible for restructuring under part 401 is seeking contract renewal under §402.4, the most recent required fiscal year audited financial statement for the project and an owner's evaluation of physical condition as provided in §401.450 of this chapter, and such other documents as HUD or the PAE may require.

(b) *Interim extension.* While a determination of owner eligibility for a request for renewal under §402.4 or §402.5(b)(2) of this chapter is pending, HUD may extend the contract under §401.600 of this chapter except that the term of the extension will be determined by HUD in its sole discretion.

(c) *Exception for moderate rehabilitation contracts.* Paragraphs (a) and (b) of this section do not apply to requests for renewal of section 8 moderate rehabilitation contracts (other than for single room occupancy dwellings under section 441 of the Stewart B. McKinney Homeless Assistance Act). Separate instructions for renewal requests will be issued by the appropriate HUD official.

[63 FR 48953, Sept. 11, 1998; 63 FR 71374, Dec. 28, 1998, as amended at 65 FR 15498, Mar. 22, 2000]

§ 402.7 Refusal to consider an owner's request for a section 8 contract renewal because of actions or omissions of owner or affiliate.

(a) *Determination of eligibility.* HUD may elect not to consider the request for renewal of project-based assistance if, at any time before contract renewal:

(1) The owner or an affiliate is debarred or suspended under part 24 of this title; or

(2) HUD determines that the owner or an affiliate has engaged in material adverse financial or managerial actions or omissions as described in section 516 of MAHRA, including any outstanding violations of civil rights laws in connection with any project of the owner or an affiliate.

(b) *Dispute and appeal.* An owner may dispute a rejection and seek administrative review under the procedures in subpart F of part 401 of this chapter.

(c) *Consequences of refusal to consider request.* If an owner's request for renewal of project based assistance is rejected under this section, HUD may